No. 25-6002

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

KARL ROSEBORO, *Petitioner, pro-se*

vs.

MELISSA HAINSWORTH, ET AL., *Respondents*

ON PETITION FOR A WRIT OF CERTIORARI TO
Third Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) When rumors that Petitioner was involved in the murder were twice put into evidence before the jury without counsel objecting or asking for a curative instruction, did the District Court's ruling that a curative instruction was not needed because it may remind the jury of the rumors, stray too far from this Court's and many other Federal Circuits and even state court's standard decisions that curative instructions are mandatory and presumed to be followed in order to limit and to focus the jury on its permissible use of the rumors, especially when the judge's jury charge permitted the witness's testimony to be considered as substantive evidence?

Suggested Answer, *Yes.*

(2) As the U.S. Supreme Court has never decided a case involving ineffective assistance of counsel relative to broken promises to a jury, is this court's guidance needed to resolve disputes among the federal circuit courts as to what prejudice analysis should be employed, **Strickland**, or **Cronic** (when the broken promises fails to subject the prosecution's case to a meaningful adversarial testing?

Suggested Answer, *Yes, the Court's guidance is needed.*

(3) When a lower court finds no prejudice has resulted from counsel's deficient performances due to overwhelming "undisputed evidence" of guilt, should not the disputed evidence never admitted due to counsel's errors be considered to potentially offset a finding of overwhelming evidence?

Suggested Answer, *Yes.*

List of Parties

Melissa Hainesworth, Superintendent of SCI Laurel Highlands, has immediate custody of Petitioner: SCI Laurel Highlands, 5706 Glades Pike, PO Box 631, Somerset, PA 15501.

The Attorney General of Pennsylvania (*has not been involved in any prior litigation*). The Attorney General of Pennsylvania, 16th Floor, Strawberry Square, Harrisburg, PA 17120.

The District Attorney of the County of Philadelphia, ADA Jaclyn M. Mason, *Lead Attorney*, Federal Litigation Unit, Three South Penn Square, Philadelphia, PA 19107-3499.

List of Proceedings in State and Federal Judiciary

Petition for Rehearing, 3rd Circuit Court of Appeals, No. 25-1415.

Application for a Certificate of Appealability: 3rd Circuit Court of Appeals, **Roseboro v. Hollibaugh, et al.,** (3rd Cir. No. 25-1415).

Petition for Writ of Habeas Corpus, U.S. District Court for Eastern Dist. of Pa., **Roseboro v. Hollibaugh, et al., (No. 22-cv-3377)** 2025 US Dist LEXIS 26750, Final Order denying Habeas Corpus Relief, Judge Pappert, dated February 14, 2025.

Petition for Writ of Habeas Corpus, U.S. District Court for Eastern Dist. of Pa., **Roseboro v. Hollibaugh, et al., (No. 22-cv-3377)** 2025 US Dist LEXIS 239793, Report & Recommendation, (against granting relief) MJ Sitarski, dated February 7, 2024.

Petition for Allowance of Appeal, (DENIED) **Commonwealth v. Roseboro**, Pa. State Supreme Court, **(No. 42 EAL 2022)** 283 A.3d 176 (Pa. 8/3/2022).

Collateral Appeal to Superior Court of Pennsylvania, **Commonwealth v. Roseboro**, 256 A.3d 44 (Pa.Super. 2021), affirming PCRA Court's final order denying collateral relief (Post Conviction Relief Act).

Post Conviction Relief Act Petition, **Commonwealth v. Roseboro**, CP-51-CR-0001397-2013, Court of Common Pleas of Philadelphia County, Pa., Final Order denying PCRA relief, dated November 25, 2019.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

OPINIONS BELOW

The final order of the United States court of appeals denying a Rehearing appears at Appendix A and is unpublished (No Opinion was made).

The final order of the United States court of appeals docketed at C.A. No. 25-1415 denying a Certificate of Appealability appears at Appendix B and is unpublished (No Opinion was made).

The Opinion of the District Court appears at Appendix C and is published/reported at **Roseboro v. Hollibaugh, et al.**, 2025 U.S. Dist. LEXIS 26750, February 14, 2025.

The Final Order denying a Petition for Allowance of Appeal appears at Appendix D and is reported at **Commonwealth v. Roseboro,** 283 A.3d 176 (Pa. 2022).

The Opinion of the Superior Court of Pa. appears at Appendix E and is reported at **Commonwealth v. Roseboro,** 256 A.3d 44 (Pa.Super. 2021).

The Opinion of the Court of Common Pleas of Philadelphia County docketed at CP-51 CR-0001397-2013, appears at Appendix F and is unpublished.

JURISDICTION

A timely Petition for Rehearing to grant a Certificate of Appealability was filed but was denied by a final order by the Third Circuit Court of Appeals on June 27, 2025. Per Supreme Court Rule 14.1(e), the date of the final order subject to this Petition for Writ of Certiorari was June 27, 2025 and is attached hereto as Appendix A. [1/]

This Petition for Writ of Certiorari was filed with the Supreme Court's Clerk's Office well within 90 days after the Court of Appeals denied the Petition for Rehearing on June 27, 2025. [2/] *See* Appendix A.

The jurisdiction of the Unisted States Supreme Court is invoked under 28 U.S.C. § 1254 (1).

1/ The United States Court of Appeals for the Third Circuit rendered a final order denying the Certificate of Appealability on May 30, 2025.

2/ The Certiorari Petition was returned to Petitioner for a jurisdiction statement correction on September 4, 2025. Petitioner made the corrections and resent the Certiorari Petition to the Clerk's Office on September 10, 2025.

The corrected Certiorari Petition was again returned to Petitioner for a jurisdiction statement correction on September 25, 2025.

The corrections were made and resent to the Clerk's Office on October 1, 2025 (and a new copy of the Certiorari was served upon the Respondents).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment 6, Right to have the assistance of counsel and United States Constitution, Amendment 14, extending to the States the 6th Amendment right to the assistance of counsel. **Gideon v. Wainwright,** 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

United States Constitution, Amendment 6, Rights of the accused.

"In all criminal prosecutions, the accused shall enjoy the right to ...[h]ave the Assistance of Counsel for his defense."

United States Constitution, Amendment 14

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law;"

STATEMENT OF THE CASE

(1) In this short first degree murder trial, without objections from trial counsel nor a request for a curative instruction, the jury heard twice from the son of the victim, that during a neighborhood meeting some hours after the murder, Petitioner was being questioned as to his whereabouts at the time of the murder because "We were hearing that" Petitioner had "something to do with my mother being killed." N.T. Trial, 9/11/14, 60-61. 1/

There were no witnesses to the murder, nor was a firearm ever recovered or tied to Petitioner. N.T. Trial, 9/11/14, 187. The Court determined there was no evidence of a motive in the case, N.T. Trial, 9/5/14, 85-86. Petitioner and the victim had a family relationship with no known problems,. N.T. Trial, 9/10/14, 132-133, 173-174; N.T. Trial, 9/11/14, 13. Two Commonwealth witnesses also testified that Petitioner maintained that he was not present when the victim was murdered, N.T. Trial, 9/10/14, 181; N.T. Trial, 9/11/14, 60.

During the judge's instructions to the jury, the son's testimony and his prior preliminary hearing testimony "have equal weight of evidence." N.T. Trial, 9/12/14, 155.

At a Post Conviction Relief Act collateral hearing, after extensive cross-examination of trial counsel, the PCRA court ruled that his omissions constituted deficient performance. N.T. Evid. Hear. 11/25/19, 84-85 (however finding no prejudice via **Strickland**).

1/ The rumor testimony was not unexpected but both the Court and the Prosecutor indicated that due to prejudice concerns, the rumors would not be admitted for the truth of the matter, N.T. Trial, 9/10/14, 3, 7, albeit counsel was adamant that the whole testimony should be precluded, *id.*, which was consistent with his testimony at a later Post Conviction Relief Act hearing where he conceded he had neither tactic nor strategy for the omissions. N.T. Hearing, 11/25/19, 17-18, 27-28.

On federal habeas corpus appeal, Judge Pappert overruled the deficient performance finding on the basis that despite the rumors the denial of killing the victim helped to bolster a lack of motive and to show the victim had a mother/son relationship with Petitioner. Appendix C, at pages 13-14.

Judge Pappert omitted to address the lack of a curative instruction except to say, it may have reminded the jurors of the rumors which Petitioner pointed out the son's testimony was wholly admitted into evidence including the rumors for consideration by the jury.

Finally, Petitioner contended to no avail that two of this Court's rulings and other lower court's holdings (touched on in *Reasons for Granting the Petition)* went against the District Court's reasoning: a curative jury instruction is required to guide the jury on the restrictions of inadmissible prejudicial statments and the jury is presumed to follow the court's instructions to disregard prejudicial testimony such as rumor testimony and not consider it as truth of the matter asserted.

(2) The Commonwealth's key evidence emanated from a detective who was an expert in video--*Dunlap*--who after analyzing the video surveillance tape of a nearby minimarket found the stamp time on the video was nearly 10 minutes behind real time which placed Petitioner and the victim together shortly before she was murdered. After the two went off camera, thirty seconds later some sounds purportedly gunshots were recorded on the audio portion of the tape. Then shortly thereafter a 911 call was made reporting gunshots and a woman screaming.

Trial counsel promised the jury that Dunlap's analysis was faulty because the lead, assigned homicide detective--*Dove*--analyzed the same video tape and found it ...[w]as a little slow in comparison to real time. I would say a little, it was within minutes off." N.T. Preliminary Hearing, 1/30/13, 82.

Due to a misunderstanding of evidentiary law counsel never called Dove as a witness nor had the former testimony entered into evidence which Federal Judge Pappert determined constituted deficient permformance, Appendix C, 21. Deficient performance was also found when counsel failed to investigate/obtain Dunlap's report on his video analysis which was a key part of the defense along with Dove's testimony being critical to that strategy. Appendix C, 22.

The trial judge also found that Dove's testimony was critical for the defense. N.T. Trial, 9/12/24, 21.

During the trial, counsel himself cast doubt on his promised evidence: after another detective testified he was with Dove in the minimarket the whole time and Dove never downloaded any video tape, N.T. 9/11/14, 162-164, whereupon counsel uttered: perhaps Dove was not telling the truth, *id.*, at 164. Although counsel of record for the preceding 16 months, he did not realize that Dove had downloaded the video much earlier in the investigation and later had revisited the minimarket with the testifying detective for other purposes.

In its closing, the Prosecutor argued that counsel had made many broken promises. N.T. Trial, 9/12/14, 121.

During trial, the video/audio tape was played for the jury at least four times; and while deliberating, the jury requested to revisit the video/audio on three different times. N.T. Trial, 9/15/14, 3, 4-5; N.T. Trial, 9/16/14, 3.

Petitioner unsuccessfully adduced to the District Court that counsel's deficient performances resulted in errors in Dunlap's conversion to go unexplained to the jury. This was noted by the trial judge that Dunlap "[h]ad the times wrong anyway but that is for the jury to decide." N.T. Trial, 9/10/14, 55-56, and Federal Judge Pappert agreed that Dunlap's time line was "impeachable" but it was never explained to the jury. Appendix C, 20.

The record shows that the body of the victim was reported to headequarters around 2:29am real time, Appendix C, *id.*, but the officer who searched and found the body was on video still seated in the patrol car at 2:29am real time. N.T. 9/10/14, 22. He is seen leaving the patrol vehicle on foot and going off camera at 2:29:53 am real time to search for a potential victim who was found some time later. *Id.* Petitioner proffered that the record showed consistent errors made by Dunlap but that Dove's real time conclusion which was much shorter than adding ten minutes to the video stamp time, was more reliable and in *sync* with the video stamp time. [2/]

[2/] Not to belabor the point but also the record shows the medics arrived and pronounced the victim dead at 2:31am real time. N.T. Trial 9/11/14, 6, an impossibility under Dunlap's conversion. A Crime Scene Log--Trial Exhibit C-23--started by the officers after the victim's body was found so incoming officers could note times of arrival and departure, Trial. N.T. 9/9/14, 164, is replete with unexplained arrival times that do not coincide with Dunlap's conversion. Arrival real times for many of the secondary responders are penned in at 2:15am; 2:28am, another 2:28am and a 2:20am.

Despite the above deficient performances and unexplained faulty time conversions by Dunlap, Judge Pappert ruled that Petitioner proved no prejudice because the jury heard "*undisputed evidence*" as to Dunlap's expert testimony. Appendix C, 7. To no avail, it was adduced that the evidence was undisputed due to counsel's errors and that the missing defense evidence should factor into the prejudice analysis especially the finding of overwhelming evidence.

As to the tape's audio portion, Judge Pappert opined that despite Dunlap's errors, it did not matter because thirty (30) seconds after petitioner and the victim went off camera, the audio portion recorded various sounds, four of which were argued to be gunshots. Appendix C, at 15. Then two minutes later, the 911 call was made reporting gunshots and a woman screaming. *Id.* The finding relied on Dunlap's "*undisputed*" evidence albeit the audio portion of the video had other credibility problems that tended to show the noises were not gunshots.[3/]

3/ Under Dove's analysis of a much shorter time between stamp time and real time, the conclusion would have put six to seven minutes from the purported gunshots to when the 911 call was made. It was offered that a reasonable juror would pause to consider why the caller would have waited so long to make the 911 call if the noises were gunshots. And no woman screaming was recorded on the audio. Judge Pappert stated that "is not implausible." Appendix C, 19, 2nd para. If the jury discredited Dunlap's time conversion findings, it may have found reasonable doubt in all of the time points predicated on his conversions. Dove's shorter time line also supported Petitioner's denials that he was "not around" when the victim was killed. Testimony showed that he lived a short walk from the scene of the murder. N.T. 9/10/14, 101-131.

Closed at the time, the Minimarket was approximately 125 feet from the alley where ten feet inside reposed the victim's body. N.T. Trial, 9/9/14, 202-207. Appendix C, footnote 9. The microphone was inside of the Minimarket and further inside of a cashier's booth for the purpose of recording robberies. N.T. Trial, 9/10/14, 35-38, 76-78, 81-83. The microphone was unable to record noises made outside of the Minimarket such as cars driving by, people talking or someone bouncing a basketball. N.T. *id.*, 82-87.

When played in its entirety, the audio had five consecutive popping sounds, a clicking noise, and a metallic grinding noise. The additional sounds did not comport with the Commonwealth's theory. *Id.* 76-77, 86.

Detective Dunlap conceded that he was not an expert with audio and he could not explain the origins of the sounds, *id.*, 79-93.

As to Judge pappert's finding of overwhelming evidence of guilt, Petitioner offered that even accepting that he was with the victim shortly before her murder, that is not evidence of criminality, just that he was on or near the scene of the murder. There were no eyewitnesses to the crime, N.T. 9/11/14, 187, no firearm discovered or tied to Petitioner, and the Commonwealth witnesses

testified that Petitioner and the victim had a familial relationship with no known problems. N.T. Trial, 9/10,14, 132-133, 173-174; N.T. 9/11/14, 13. The Court had already determined that there was no motive in the case. N.T. Trial, 9/5/14, 85-86.

There were other people on the scene. The videotape showed two people, a man and a woman, passing by Petitioner and the victim in close proximity to her murder. N.T. Trial, 9/11/14, 45-46, 68, 76-78, 124. When the police arrived they found a man sitting in a truck with the engine off. N.T. 9/9/14, 57, 82-83, 104. [4/]

The Commonwealth contended that Petitioner lured the victim into the alley then shot her to death. The trial evidence showed that the victim was a crack addict for over two decades, using, reported her son, "all day, every day". For the most part, she bought from or was given the crack cocaine for free by Petitioner, N.T. 9/10/14, 176, 105, 110. Shaquilla Harmon, Petitioner's live-in girlfriend and cousin to the victim testified that she saw Petitioner selling the victim crack on numerous occasions, *id.*, 105-106 while the victim's son stated he observed his mother receive crack from Petitioner "throughout the day." N.T. Trial, 9/11/14, 45, and saw her using crack on the day of her murder. *Id.*, 48.

[4/] The defense never received any statements nor police interviews from these on-scene people.

At 1:00am that fateful night, the victim was caught on a video camera in the presence of a male stranger who no one could identify. N. T. 9/11/14, 112. The victim was seen pacing back and forth; the Prosecutor claimed she was looking for a "fix" (crack) and then Petitioner shortly came on the scene. N.T. 9/11/14, 112. Like any normal crack delivery, the Commonwealth witnesses testified that when Petitioner would make the transaction, he would never have the drugs on his person, and would go off by himself into an emply lot in the 1800 block of Brunner Street where he kept his stash. N.T. 9/10/14, 105-107. There he would procure the crack and meet up with the victim to find a clandestine spot to pass her the drugs. *Id.* When Petitioner walked up the 1800 block of Brunner he positioned himself against one of the outside walls of the Minimarket, N.T. 9/10/14, 123-124. The victim was observed walking toward him, and he waived for her to follow him, *id.* at page 124. They began walking down the sidewalk where another couple passed them while Petitioner and the victim continued walking until they went off camera. N.T. 9/11/14, 45-47, 68, 76-78, 124. Neither were seen on camera again.

After officers Levitt and Robertson found the victim's body, they found what they termed a "secondary crime scene" which contained a bracelet on the ground

in the street possibly belonging to the victim. N.T. Trial 9/9/14 166-167. The evidence was bagged/tagged and given to Detective Dove for gunpowder/DNA testing, *id.* 172. The defense never received any results of the testing and the evidence apparently just went missing. [5/]

Officer Levitt also testified that the victim had been dragged approximately five feet into the alley. N.T. 1/30/13, Prelim. Hear., 9, 12. N.T. Trial 9/9/14, 74.

On the day before trial, two years from the crime, the Commonwealth was denied another continuance whereupon, in complete honesty, the Prosecutor stated that with the evidence they had, a jury could find reasonable doubt that Petitioner was the murderer, that someone else could have committed the murder. N.T. Motion Hear., 9/5/14, 78-79.

Besides the circumstantial evidence showing that Petitioner was on or near the scene of the crime, the remaining evidence surrounded conversations at a neighborhood meeting twelve hours later on the day of the murder that was convened--N.T. 0/10/14, 196-206--because neighborhood rumors were circulating that Petitioner was involved in the murder. N.T. Trial, 9/11/14, 60-61.

5/ Officer Levitt is currently pending criminal proceedings for charges of perjury, unsworn falsification to authorities, **Commonwealth v. Daniel Levitt,** 2024 Pa Super Unpub LEXIS 3310 (Pa. Super. 2024) while Detective Dove entered a plea of guilty to tampering with evidence in trial court docket **Commonwealth v. Dove,** CP-51-CR0001382-2015 (Philadelphia Court of Common Pleas). The other Detective who interrogated Petitioner, Pitts has been found to have committed numerous violations of police procedure and was more recently indicted for perjury. **Commonwealth v. Brown,** 2025 Pa. Super. Unpub. LEXIS 656 (Pa. Super. 2025).

Neighbor Negron testified that neighbor Dominique was not present at the meeting, N.T. Trial, 9/10/14, 201; Dominique provided a statement two years after the murder and testified that Negron was not present at the meeting. N.T. Trial, 9/10/14, 155, and that Petitioner said he was at Buffy's Bar, then Yellow Bird Bar, and then he was with Tyheem, *id.* 152; it was not unusual to go bar hopping, *id.* 171. Commonwealth witness Harmon testified that she did meet up with Petitioner around midnight at Buffy's Bar, N.T. 9/10/14, 114. Tyheem, the victim's son, also testified that he was with Petitioner after midnight but his recollection was "not that great" due to using PCP and alcohol, the PCP causing conversations not to be remembered. N.t. 9/10/14, 60-61, 98-99. Also at the Preliminary Hearing two years earlier, Tyheem testified it was his Uncle who asked him about hearing gunshots. N.T. Prelim. 1/30/13, 35-36, 61, which changed at trial, to Petitioner being the one who asked him about gunshots.

Petitioner denied being with the victim when she was murdered, N.T. Trial, 9/10/14, 181; N.T. Trial, 9/11/14, 60. At a later evidentiary hearing, Petitioner testified that he had been offered three plea agreements to plead guilty, the final one being eighteen years to thirty-six years in prison and though counsel told him to sign the agreement, Petitioner "pushed it back in front of him" and stated

he was not taking a deal. "I'm innocent." N.T. 11/25/19, 39. At that time, counsel told Judge Byrd Petitioner refused to take the deal whereupon Judge Byrd "screamed at the DA and my lawyer" and took them into his chambers. *Id.* 40.

While some neighbors testified that after the meeting they never saw Petitioner again in the area, a Commonwealth witness testified she personally dropped off Petitioner on that exact scene several times. N.T. Trial, 9/10/14, 121. As to Petitioner's mood, he was described as fidgety, upset, nervous, N.T. Trial, 9/10/14, 206. The Court noted that there was no evidence that night that Petitioner was angry. N.T. 9/12/14, 116-117.

REASONS FOR GRANTING THE PETITION

A. Supreme Court Rule 10. The Court below decided an important federal question in a way that conflicts with relevant decisions of this Court as well as with standard Circuit and State Court rulings on the same matter.

In this case the District Court ruled that counsel's omission to request a curative instruction to limit the jury's use of rumor testimony is a reasonable strategy-- Appendix C, 14-- despite counsel's admission of a lack of tatic nor strategy and the state court's finding deficient performance.

The District Court (the 3rd Circuit gave no opinion) reasoned that the curative instruction risked emphasizing the rumor testimony which was a downside for Petitioner. *Id.*

The reasoning is confusing because wihtout a curative instruction, the jury already had the unfettered use of the rumor evidence in deciding guilt or innocence so it follow that it was without such an instruction a gargantuan "*downside*". In fact, the rumor was the "*missing link*" in the Commonwealth's case. **United States v. Lee,** 573 F.3d 153, *164* (3rd Cir. 2009).

In a case with no witness to the murder, the rumor created a person(s) who may have witnessed the murder or had other personal knowledge of Petitioner's

involvement. The prejudice is incalculable as it would naturally influence the jury's perception of guilt and bolster other properly admitted evidence. [6/]

The District Court's decision also ran afoul of this Court's decisions that a jury is presumed to follow curative instructions to disregard inadmissible evidence. **Greer v. Miller,** 483 U.S. 756, *766 n. 8,* 97 L.Ed.2d 618, 107 S.Ct. 3102 (1987); **Darden v. Wainwright,** 477 U.S. *168,* 181, 91 L.Ed.2d 144, 106 "S.Ct. 2464 (1986).

In **Delli Paoli v. United States,** 352 U.S. 232, *242,* 77 S.Ct. 294, *300,* 1 L.Ed.2d 278 (1958), this Court held that the jury system "makes little sense" unless we proceed on the basis that the jury will follow the court's instruction when clear and can reasonably be expected to follow them.

"Prompt curative instructions" suffice "to eliminate any unfair prejudice that might have resulted from a fact being placed unfairly before the jury." **United States v. Coffey,** 823 F.2d 25, *28* (2nd Cir. 1987). Indeed, "such limiting

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[6/] The rumor's *unreliability,* is present in this case. Two years before trial, Tyheem testified at the Preliminary Hearing never saying anything about Petitioner's possible involvement. When asked why someone would kill his mother, Tyheem replied because she was stealing drug dealer's stashes. N.T. Prelim. Hear. 1/30/13, 70-72. The record shows that while Petitioner was a small time drug dealer in crack and marijuana he would often give the victim drugs for free and on other occasions he would let her slide on a payment when she would say that her cousin, Petitioner's girlfriend, would cover the costs. N.T. Trial, 9/10/14, 105, 110. Moreover, Tyheem testified at trial that he observed his mother receive crack from Petitioner "throughout the day", N.T. 9/11/14, 45, and witnessed her using crack on the day of her murder, *id.* 48. Obviously, Petitioner was not the drug dealer from whom the victim was stealing. Two or more months after the murder, Petitioner wasn't even a suspect in the murder; before arrest, the homicide detectives questioned him as to who killed Ms. Williams.

instructions are 'an accepted part of our present trial system'" **United States v. Ebner,** 782 F.2d 1120, *1126* (2nd cir. 1986).

The curative/limiting instruction is so essential to our American Jurisprudence that the case decisions swing both ways. If a curative instruction is given, the issue of inadmissible evidence causing prejudice and an unfair trial is neutralized. **Travison v. Jones,** 522 F.Supp. 666, *670* (N.D.N.Y. 1981)(limiting instruction vitiated claim of no fair trial); **Southerland v. Sycamore Community School District Board of Education,** 125 Fed. Appx. 14 (6th Cir. 2004)(rumors disregarded by jury when court gave a limiting--not for the truth of the matter--instruction); **Bhandari v. WHA Southwest Community Health Corporation,** 778 F.Supp. 2d 1155 (Dist. Ct. New Mexico (2011)(instruction not to consider rumors for the truth of the matter rumored); **U.S. v. Looking Cloud,** 419 F.3d 781 (8th Cir. 2005)(rumors instructed to be for limited purpose).

In **Tennessee v. Street,** 105 S.Ct. 2078 (1985) that set the clear principle that a curative jury instruction is required in order to guide the jury on the restrictions of inadmissible evidence, the conviction was upheld on the basis of the limiting instruction which was necessary and constitutional. **Tennessee v. Street,** was

also discussed by Justice Thomas who concurring in **Williams v. Illinois**, 132 S.Ct. 2221 (2012) wrote that the limiting instruction in **Tennessee v. Street** had satisfied the confrontation clause.

To the contrary there are cases both state and federal from around the United States that have granted new trials when rumor testimony implicating the defendant was not accompanied by a curative instruction.

In **Atkins v. Hooper**, 979 F.3d 1035 (5th cir. 2020), the Circuit court ruled that a state court had misapplied **Tennessee v. Street**, *supra*, which though involving a different set of facts, violated the clear principle that errors can be reviewed differently when the jury is bereft of a curative instruciton.

In **U.S. v. Melendez-Rivas**, 566 F.3d 41 (1st Cir. 2009), the Court reversed and remanded for trial the lower court's denial of relief based on rumor testimony being admitted and the court's refusal to give the jury a curative instruction. 7/ Even when a curative instruction is given, relief can be granted after testimony comes in that someone told the detective that the defendant was involved in the murder. **U.S. v. Hernandez**, 176 F.3d 719 (3rd Cir. 1999).

7/ The Circuit Court ruled the rumor evidence was both inadmissible and prejudicial hearsay while noting a heightened danger when the judge elicits responses from the witness that are harmful to the accused and to which the jury may assign unfair weifght. This occurred in Petitioner's case when the trial court upon hearing the first instance of rumor testimony asked: "You said to him, I am hearing that you had something do do with my mom being killed?". The reply was, "Yeah.", N.T. Trial, 9/11/14, 60-61.

In the Pennsylvania State Supreme Court in **Commonwealth v. Coleman,** 230 A.3d 1042 (Pa. 2020), a new trial was granted because no curative instruction was given as to rumors that Coleman and his codefendant committed the murder, at 1049-60.

In **People v. Johnson,** 185 A.D. 2d 247 (N.Y. App. Div. 1992) rumors without a curative instruction resulted in a new trial; **People v. Garcia,** 202 A.D.3d 1020 (N.Y. App. Div. 2022)(anonymous tip defendant involved in murder; no curative instruction; jury may have used evidence as substantive evidence of guilt); **State v. McIntyre,** 754 P.2d 1093 (Kan. 1982)(same; rumors defendant was a murder suspect); **Commonwealth v. Rosario,** 685 N.E. 2d 488 (Mass. 1997)(rumor defendant involved in killing with no curative instruciton resulted in reversal and remand); **State v. Williams,** 427 S.E. 2d 512 (North Caro. 1993)(highly prejudicial testimony rumor was defendant had something to do with murder without a curative instruction warranted new trial).

Despite the Commonwealth and the trial court indicating the jury would be instructed not to accept the rumors for the truth of the matter, the instruction never transpired. In the short trial--200 pages background info.-- the circumstantial evidence showed that Petitioner was with the victim shortly before she was murdered, this

is not evidence of guilt. **Ybarra v. Illinois,** 100 S.Ct. 338 (1979)(mere presence on the scene of a crime is insufficient to even establish probable cause to arrest).

B. 1. Supreme Court Rule 10. The following is a compelling reason for this Court to exercise its discretionary review: this Court has never decided a case of counsel ineffectiveness as to broken promises made to a jury therefore there is no clearly established federal law on this often litigated issue. **Elias v. Coleman,** 185774 U.S. Dist. LEXIS 2017 (W.Dist. of Pa. 2017); **Ruine v. Walsh,** 14298 U.S. Dist. LEXIS 2005 (S. Dist. N.Y. 2005); **Clary, Jr., v. Shinn et al.,** 59989 U.S. Dist. LEXIS 2023 (Dist. of Arizona, 2025).

B. 2. Supreme Court Rule 10. In connection with **B.1.**, *supra,* the U.S. Courts of Appeals are rendering conflicting decisions on this often litigated subject which harkens for this Court to exercise its discretion to unify and guide the Courts below. Some Courts utilize **Strickland's** prejudice prong while others find prejudice *per se* pursuant to **Cronic.** Given the critical errors made by Petitioner's trial counsel that left the defense with no available oppositional evidence, the broken promises were more applicable to **Cronic's** *per se* prejudice analysis.

*Cases that relied on the **Strickland** prejudice prong:*

Ouber v. Guarino, 293 F.3d 19 (1st Cir. 2002); **Turner v. Williams**, 35 F.3d 872 (4th Cir. 1994)(rejecting **Anderson v. Butler**, 858 F.2d 16 (1st Cir. 1988) for a standard **Strickland** prejudice analysis); **English v. Romanowski**, 602 F.3d 714 (6th Cir. 2010).

Middle of the Road Cases

United States v. McGill, 11 F.3d 2123 (1st Cir. 1993)(broken promise may in some cases be deemed ineffective assistance, *citing* **Anderson v. Butler**, *supra*, but in other cases, courts should utilize **Strickland's** prejudice prong.

*Cases settled with **Cronic's** per se prejudice analysis*

Anderson v. Butler, 858 F.2d 16 (1st Cir. 1988); **McAleese v. Mazurkiewicz**, 1 F.3d 159, *166* (3rd Cir. 1993)(failure to produce promised evidence sufficient of itself to support ineffective counsel claim); **Saesee v. McDonald**, 725 F.3d 1045, *1050* (9th Cir. 2023)(broken promise key to defense theory may result in prejudice to defendant); **Plummer v. Jackson**, 491 Fed. App. 671 (6th cir. 2010)(broken promise creates negative inference against both defendant and counsel);

Hampton v. Leibach, 347 F.3d 219 (7th Cir. 2003)(broken promises supplied jury reason to believe no evidence contradicted the state's case); **Williams v. Woodford, et al.**, 859 F.Supp. 2d 1154 (E.Dist. CA 2012)(Judge Kozinski gives a thorough discussion why **United States v. Cronic**, 104 S.Ct. 2039 (1984) is applicable (as Petitioner's case exemplifies) because the most serious harm is from counsel failing to spend time and effort to prepare adequately causing prejudice. "The Constitution demands more.").

As the statement of the case demonstrates, trial counsel interviewed no Commonwealth witnesses, failed to call the critical witness or to have his former testimony admitted into evidence (due to misunderstanding of evidentiary law) failed to investigate/obtain the Commonwealth's expert's report (which led to the jury not realizing the expert's conversion analysis was erroneous--experts to make mistakes--**Hinton v. Alabama**, 134 S.Ct. 1081 (2014), permitted very damaging rumors into evidence, and broke promises to the jury leaving the Commonwealth's case entirely unopposed or "undisputed" as Judge Pappert ruled. "Truth" Lord Eldon said, "is best discovered by powerful statements on

both sides of the question." **Cronic**, *supra*, 466 U.S. at 656. Here, counsel gave powerful statements during opening and closing arguments but offered the jury no supporting evidence to consider. [8/]

C. Supreme Court Rule 10. The following is a compelling reason for the Court to exercise its discretionary review: when **Strickland's** prejudice prong is being analyzed and the court finds no prejudice due to the jury hearing "undisputed evidence" (Appendix C, 7) this Court should guide the lower courts to factor into the analysis counsel's deficient performances which left the jury bereft of available, controverting/oppositional evidence. Failing this, hampers a reliable prejudice prong review and imputes blame onto the defendant for the legal

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[8/] The text of the 6th Amendment suggests that the right to counsel encompasses the right to the effective assistance of counsel, **Cronic**, *supra*, at 655. When the trial court finally provided counsel the correct evidentiary standard to admit Dove's former testimony into evidence and/or to call Dove as a witness (he was available) counsel asked the Court, "How do I get in touch with him?" N.T. Trial, 9/12/14, 20-21. Rather than act on the Court's advice, counsel just pushed forward and argued the former testimony during closing notwithstanding the Court instructed the jury arguments were not evidence to be considered. N.T. 9/9/14, 8 (opening and closing arguments are not evidence)(if they say it but you do not see it come from the witness stand, it does not exist, *id.* at 40); (an attorney can in their question or in their opening or closing argument suggest facts to you that are not in evidence that a witness did not say, that comes from the attorney and then those facts get into your brain. So that is why you have to be aware of it. *Id.*, at pages 13-14).

mishaps of counsel. The "undisputed evidence" Judge Pappert alludes to was wholly made possible by counsel. Also, *see* Judge Kozinski's thoughful discussion in **Williams v. Woodford, et al.**, *supra.*

If counsel's errors upset the balance in our adversary system of criminal justice, "[t]hat partisan advocacy on both sides of a case best promotes the ultimate objective that the guilty be convicted and the innocent go free...", **Herring v. New York**, 95 S.Ct. 2550 (1975), then at least the errors can accrue to benefit the accused in the prejudice analysis on appeal. [8/]

8/ This case would have benefited from appointment of counsel as Petitioner has been *pro-se* since the Superior Court appeal from the denial of the PCRA. It is worth noting that unlike the state court rulings, Petitioner was able to convince the federal judiciary that counsel provided deficient performances on three of the four habeas issues but may not have had the expertise or knowledge to adequately address the prejudice prong of the **Strickland** test.

In addition, there are other factors recently revealed by the federal Assistant District Attorney Mason who handled the habeas corpus response. Through a new transparency policy, Petitioner was provided information that five of the law enforcement officers involved in his case have either been fired, prosecuted for various crimes, and other inappropriate conduct. *See also,* footnote 5, *supra.* One of the officers is now is in pre-trial proceedings, *Id.*

The Philadelphia Assistant District Attorney who handled the trial, Andres Notaristefano, has also been fired from the District Attorney's Office. *See,* Prosecutorial Misconduct in the Philadelphia District Attorney's Office, The Peter L. Zimroth Center on the Administration of Criminal Law, NYU School of Law; at page 27, ADA Notaristefano was fired on the eve of a murder trial. In Petitioner's case, though there were people on or near the scene of the murder, the defense never received any statements/police interviews involving these individuals. It seems incomprehensible that a detective went door to door interviewing residents in the area and their interviews/statments were provided to Petitioner, but not witnesses who would have been in ear shot of what the Commonwealth alleged were gunshots.

CONCLUSION

Wherefore, Petitioner prays in relief that because the record shows that he has made a substantial showing of the denial of his constitutional right to reasonably effective assistance of counsel, 28 U.S.C. § 2253 (c)(2), a writ of certiorari should be granted for the Court to summarily remand the case to the Circuit Court for the granting of a Certificate of Appealability. **Barefoot v. Estelle,** 463 U.S. 880, *893* (1983).

Petitioner has demonstrated that the issue is debatable among jurists of reason and the matter could be resolved in a different manner and that the questions are adequate to deserve encouragement to proceed further. **Miller-El v. Cockrell,** 537 U.S. 322, *338* (2003).

Petitioner further prays that a writ of certiorari should be granted for the reasons stated herein.

Respectfully submitted,

Karl Roseboro

Karl Roseboro, Petitioner *pro-se*

Date: July 31, 2025